

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting)	
)	DOCKET NO. UG-010522
WAC 480-93-240 and)	
WAC 480-75-240)	GENERAL ORDER NO. R-493
)	
Relating to)	ORDER ADOPTING IDENTICAL
Pipeline Safety Funding)	RULES ON AN EMERGENCY
)	BASIS
.....)	

- 1 This is an emergency rulemaking proceeding to adopt rules that will become effective when filed. These emergency rules establish a methodology for collecting pipeline safety fees pursuant to legislative authority to meet the costs of conducting the pipeline safety program established in Title 81 RCW. The Commission first adopted emergency rules addressing this topic on June 13, 2001, filed at WSR 01-13-045. Those rules will expire on October 12, 2001. The Commission has filed at WSR 01-20-058 proposed permanent rules to address the needs satisfied by the emergency rules. This order adopts rules that are identical with the rules filed at WSR 01-13-045 and that will replace them to protect the public health, safety and general welfare until permanent rules are adopted.
- 2 The Washington Utilities and Transportation Commission is conducting this rulemaking pursuant to RCW 80.01.040 and RCW 34.05.350. This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), and the State Environmental Policy Act of 1971 (chapter 43.21C RCW).
- 3 While the emergency rule process set forth in RCW 34.05.350 permits agencies to dispense with the requirements of notice and opportunity to comment, the Commission did provide notice of its consideration of these rules, and did receive and consider written and oral comments on the proposal.¹

¹ Commission Staff's Open Meeting Memorandum dated June 13, 2001, sets out a substantial record of notice and comment for the time during which these emergency rules and their predecessors were under consideration. Many of the suggestions made by interested persons were incorporated into the adopted rules.

- 4 The Commission designates the discussion in this order as a concise explanatory statement,² supplemented where not inconsistent by the Commission Staff memorandum presented at the open meeting³ where the Commission considered whether to adopt emergency rules.
- 5 The purpose of these rules is to ensure a sustainable, comprehensive, pipeline safety program, to protect the health and safety of the citizens of Washington, and maintain the quality of the state's environment. This will be accomplished by securing permanent funding for the pipeline safety program through establishment of a regulatory fee imposed on hazardous liquids and gas pipeline companies.
- 6 The facts requiring emergency action, and the readoption of WAC 480-93-240 and WAC 480-75-240 on an emergency basis, are as follows:
- 7 Section 2, chapter 238, Laws of 2001 requires that the Commission establish in rule a methodology by which fees are set and collected to fund the pipeline safety program. The law became effective on July 1, 2001. Current funding authority for the existing pipeline safety program expired June 30, 2001. Without emergency rules in place, there would not be sufficient funds to meet program needs.
- 8 The Commission filed a Notice of Proposed Rulemaking (CR-102) on September 28, 2001, under WSR #01-20-058 to adopt the provisions of the rules, on a permanent basis. This filing demonstrates the Commission's intention to adopt permanent rules establishing a methodology for collecting pipeline safety fees. The Commission has observed, and will continue to observe, the full requirements of notice and opportunity to comment upon adoption of permanent rules in that rulemaking. The Commission provided notice to industry of this proposal, received written and oral comments, and used those comments to develop the first emergency rules, which it readopts by this order. Interested persons have had a reasonable opportunity to comment and participate in the development of the rules.
- 9 The Commission finds that the circumstances that required the initial adoption of WAC 480-093-240 and WAC 480-075-240 are continuing and require that identical rules be adopted on an emergency basis in order to preserve the public health, safety, or general welfare. The emergency rules will remain in effect only until permanent rules are adopted.

² A concise explanatory statement as provided for in RCW 34.05.325 is not required in emergency rulemakings. Because of the level of interest in this rule and the public involvement, the Commission believes that it is appropriate to acknowledge the involvement by describing in a concise explanatory statement how comments affected the development of the rule.

³ June 13, 2001.

- 10 The Washington Utilities and Transportation Commission finds that an emergency exists. The Commission finds that immediate adoption of rules establishing a pipeline fee methodology is necessary. The Commission is actively undertaking the appropriate procedures to adopt the rules as permanent rules. When adopted those rules will replace these emergency rules.

ORDER

- 11 THE COMMISSION ORDERS That WAC 480-093-240 and WAC 480-075-240, as set forth in Appendix A, are readopted to take effect as emergency rules of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.350 and RCW 34.05.380(2), to be effective when filed.

- 12 THE COMMISSION FURTHER ORDERS That this Order and the rules set forth in Appendix A, after being first recorded in the order register of the Washington Utilities and Transportation Commission, be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this day of October, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner